



Comptroller General  
of the United States

Washington, D.C. 20548

B. Coles  
147175

## Decision

**Matter of:** U.S. Constructors, Inc.

**File:** B-248757

**Date:** August 31, 1992

Theodore M. Bailey, Esq., for the protester,  
John M. Hewins, Esq., General Services Administration, for  
the agency.  
Barbara C. Coles, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Allegation that the president of the low bidder is affiliated with a debarred corporation constitutes a protest of an affirmative determination of responsibility which our Office will not review in the absence of a showing of fraud or bad faith on the part of the contracting officer or a failure to apply definitive responsibility criteria.

### DECISION

U.S. Constructors, Inc. protests the proposed award of a contract to Armstrong Elevator Company under invitation for bids (IFB) No. GS-07P-92-JXC-0048, issued by the General Services Administration (GSA) for modernization of elevators at the J.C. Mahoney Federal Center/Federal Office Building, Cheyenne, Wyoming. U.S. Constructors contends that award to Armstrong is improper because Armstrong's president, Roy Armstrong, is affiliated with a debarred contractor, Elex Elevator Company.

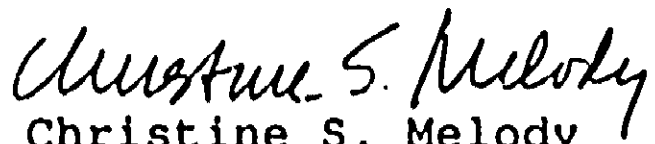
We dismiss the protest.

GSA issued the solicitation on March 18, 1992, and conducted bid opening on May 5. The agency received four bids and one "no bid" in response to the IFB. Of the four bids received, Armstrong submitted the low bid and the protester submitted the second low bid. U.S. Constructors then filed a protest with our Office challenging the proposed award to Armstrong. Shortly after U.S. Constructors's protest was filed with our Office, the contracting officer reviewed the matter and

ultimately found Armstrong responsible notwithstanding the protester's contention.<sup>1</sup>

The protester contends that the proposed award<sup>2</sup> to Armstrong is improper because the president of Armstrong, Roy Armstrong, is also the president of Elex, which appears on the debarred bidders list for Davis-Bacon Act violations.<sup>3</sup> The protester claims that since Mr. Armstrong owns both companies, he is an affiliate of the debarred company and, thus, any resulting award to Armstrong under this procurement is objectionable. In other words, the protester is challenging the contracting officer's affirmative determination of Armstrong's responsibility in light of this alleged affiliation.

Where the contracting officer has made an affirmative determination of the awardee's responsibility, we will not review that determination without a showing that the contracting officer acted fraudulently or in bad faith or failed to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1992); Alliance Properties, Inc., B-220037, Nov. 20, 1985, 85-2 CPD ¶ 572. Since U.S. Constructors has neither alleged nor shown fraud or bad faith on the part of the contracting officer or that she failed to apply definitive responsibility criteria, the protest is dismissed. Moore Serv., Inc., B-212054, Dec. 6, 1983, 83-2 CPD ¶ 648.

  
Christine S. Melody  
Assistant General Counsel

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<sup>1</sup>The contracting agency reviewed an affidavit submitted by Roy Armstrong stating in part that Elex was debarred for violations occurring before he purchased the company and, more importantly, that the Department of Labor had dismissed with prejudice any matters relating specifically to Roy Armstrong in connection with the debarment of Elex.

<sup>2</sup>The agency has postponed making an award to the low bidder until we decide the subject protest.

<sup>3</sup>The Davis-Bacon Act, 40 U.S.C. §§ 276a et seq. (1988), protects wage standards of mechanics and laborers employed directly on the worksite. Section 276a-2 provides that the Comptroller General is authorized and directed to distribute a list to all departments of the government giving the name of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors.